Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-380

CECIL D. ANDRUS, SECRETARY
OF THE INTERIOR, PETITIONER
v.
CHARLESTONE STONE PRODUCTS CO., INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 9, 1977
CERTIORARI GRANTED NOVEMBER 28, 1977

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RELEVANT DOCKET ENTRIES

United States District Court for the District of Nevada

Civil Docket No. LV–2039–BRT

CHARLESTONE STONE PRODUCTS CO., INC., PLAINTIFF-APPELLEE

vs.

CECIL D. ANDRUS, SECRETARY OF THE INTERIOR, UNITED STATES OF AMERICA, DEFENDANT-APPELLANTS

5– 4–73	Filed complaint for review with attachment J5–5.
7– 2–73	Filing answer with affidavit of mailing.
7–12–73	Filing request to file transcript of Testimony and Exhibits, the Entire [Administrative] Record with affidavit of mailing attached.
10–15–73	Filing Defendant's Motion for Summary Judgment, with certificate of service by mail.
12– 6–73	Filing Counter Motion for Summary Judgment, with service acknowledged thereon.
12–19–73	Lodging Administrative File in Two Vol. (In Exhibit Room)
12–23–73	Lodging Administrative File in One Vol. (In Exhibit Room)
6–14–75	Filing Minutes of Court. Hearing on Motions for Summary Judgment. The Court hears arguments and takes matters under submission.
11– 8–74	Filing the memorandum opinion.
11– 8–74	Filing Judgment, VIZ: IT IS HEREBY ORDERED: The decision of the Interior Board of Land Appeals filed January 18, 1973 is vacated and set aside and the subject matter of this action is remanded to the Department of the Interior for further proceedings consistent with the opinion filed. Copies to counsel entered on 11–8–74.

RELEVANT DOCKET ENTRIES

United States Court of Appeals for the Ninth Circuit

75-1532

CHARLESTONE STONE PRODUCTS CO., INC., PLAINTIFF-APPELLEE

vs.

CECIL D. ANDRUS, SECRETARY OF THE INTERIOR, UNITED STATES OF AMERICA, DEFENDANT-APPELLANTS

	1975	
Mar.	6	Docketed cause and entered appearances of counsel.
Mar.	7	Filed cert. transc. record on appeal in one volume; Vol. I pleadings, one cert. copy; * * * one box of exhibits filed in room 219 * * *
	1976	
Mar.	9	Argued and submitted to Trask, Goodwin CJJ, and East, DJ.
	1977	
May	12	Ordered opinion (William G. East, DJ) filed and judgmt. to be filed and entd.
May	12	Filed opinion—Affirmed and remanded.
May	12	Filed and entered judgment.
July	20	Filed Aple's motion for mandate to issue.
July	22	Rec'd Aplt's Motion for Stay of Mandate (late) and Opposition to Aple's motion to issue mandate.
Aug.	25	Recvd as of Aug. 4, Letter to Sol. General from Clerk of Supreme Court advising him that Mr. Justice Rehnquist granted extension to file certiorari until Sept. 9, 1977.

1977	
Aug. 27	Filed, as of 8/25/77, order (T,G, & East) it is ordered that this mandate upon the decision in the above-captioned case be stayed until 9/10/77, or if a petition for certiorari is filed in the USSC on or before that date, until denied by the USSC, or if granted, until the matter is finally resolved by that court.
Sept. 15	Received Supreme Court certificate of filing petition for certiorari on Sep. 9, 1977, assigned No. 77-380 (to panel).
Dec. 1	Filed cert. copy of SC order *granting* certiorari on 11/28/77. Copy of order to panel.

REPORT ON SAND AND GRAVEL MARKETABILITY IN LAS VEGAS VALLEY, NEVADA

November, 1956
Starr Hill, Jr.
Earl M. P. Lovejoy

H. INVESTIGATION OF OPERATING SAND AND GRAVEL PITS AND PLANTS IN LAS VEGAS AREA E. J. BRAWNER SAND & GRAVEL CO.

A. Deposit

[Picture omitted.]

1. Location: North 7 miles on Tonopah highway, then 4 miles west, a total of 11 miles from Las Vegas.
2. Size of deposit: 600 acres held by 30 lode claims.
3. How long claims have been owned: Claims located in 1942.
4. Type of sand and gravel *in pit:*
   (a) Depth: Exceeds 120 feet.
   (b) Bedrock: No caliche or bedrock reached.
   (c) Excavation: Easily excavated—no cementation.
   (d) Type of Rock: Limestone—angular.
   (e) Rock size: Very few oversize (½%).
   (f) Sand: Passes sulphate and rattler test.
5. Calculated gravel reserves: 20,000,000 cu. yds.

B. Plant

1. Description of plant:

[Picture omitted.]

   (a) Location: Plant is at the pit.
   (b) Stationary or portable: Semiportable.
   (c) Cost of plant: $76,000.00.
   (d) Make of plant: Dodge and Tyrock.
2. Type of material produced:
   (a) Suitable material for the manufacture of concrete pipe. (1) Supply Concrete Conduit Co.

(b) Concrete aggregate: (1) Supply Stocks Transit Mix.

(c) Plaster and masonry sand.

(d) Plans to use lower claims for new Tonopah highway.

(e) Plans to crush limestone ledges to 3" to furnish material for runway construction at Nellis A.F.B.

3. Capacity of plant: 1,200 tons/8 hrs.

4. Past production: Brawner has produced 15,000 cu. yd. Pit has produced 75,000 cu. yd.

5. Production costs:

$0.06/ton mile to haul.

$0.25/ton to load.

Current retail prices—(Delivered to center of Las Vegas):

Plaster sand—$3.50–$4.50/cu.yd. (depends on size)

Concrete sand—$3.25/cu.yd.

1½"–⅜"—$3.25/cu.yd.

Pea gravel—$3.00/cu.yd. (¼"–⅜")

6. Source of water: No water at the pit or plant.

• • • • •

8. Present production:

During September and October business was very quiet.

Future outlook is good: (1) Contracts for $6,800.00 in November; (2) contracts for $5,950.00 in December and January; (3) contracts for $23,000.00 in February, March and April.

9. Maximum capacity of plant: 3,600 tons of aggregate/24 hours.

• • • • •

U.S. Department of the Interior, Bureau of Land Management

Nevada 065729 (A–Q) and NEVADA 065731 (A–B) (Involving CHARLESTON Nos. 1 to 22 and CHARLESTON 12A and 13A placer mining claims, situated in Secs. 34, 35, 36, T. 19 S., and in Secs. 3 and 4, T. 20 S., R 59 E., MD Meridian, Clark County, Nevada.)

UNITED STATES OF AMERICA, CONTESTANT

v.

CHARLESTON STONE PRODUCTS, INC., CONTESTEE

Deposition of HARRISON S. STOCKS, Las Vegas, Nevada, July 19, 1966, 1:30 o'clock p.m.

Before: Hon. PAUL J. DUMM, Hearing Examiner, U.S. Department of the Interior, Bureau of Land Management

Appearances:

For the Contestant: Otto Aho, Field Solicitor, U.S. Department of the Interior, Reno, Nevada.

For the Contestee: E. A. Hollingsworth and Lee Walker,

Attorneys at Law.

MARK M. GRUMLEY,
Official Reporter.

[8] HARRISON S. STOCKS, called as a witness on behalf of the Contestee, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. HOLLINGSWORTH:

Q. Will you please state your full name.
A. Harrison S. Stocks, Harrison Sidney Stocks.

883-437 O - 70 - 5

Q. Where do you live, Mr. Stocks?
A. Las Vegas.
Q. That is in Nevada?
A. Las Vegas, Nevada, yes.
Q. What is your present occupation?
A. Ready mix business.
Q. Ready mix business?
A. Ready mix concrete.
Q. How long have you been in the ready mix business?
A. Well, in the actual ready mix business, about 12 years, but we were in the concrete ready mix business in the old fashioned way ever since 1928, '29, you know, mixing by small mixers, and so forth, but in the actual ready mix business, about around 12 or 13 years.
Q. How long have you been in Las Vegas, Nevada?
A. Thirty-nine years, 38 years.

• • • • •

[19] • • • Q. Has there been a well drilled on the property?
A. There is a well drilled on it. There has been a well drilled on the lower part of it, and the tank has been installed to store the water and the pump, we made arrangements for the pumps and the pipe, which we have never put up, to raise the water up an additional 700 feet up the hill to the site of the aggregate, the gravel and sand.

• • • • •

[33] • • • Q. Are there any springs on these minings claims that you are able to observe?
A. Any what?
Q. Running springs. Water?
A. No. No, the only water that there is any place is here [indicating], and up further here they went 1700 feet before they struck water. Here [indicating] they struck water about four or five hundred feet. They pump it up there. It is pumped from here [indicating] up there 700 feet.
Q. That is Charleston Stone Products, Inc?
A. Yes.
Q. And all his material here is suitable for concrete aggregate?

A. Yes.

• • • • •

[41] • • • Q. Do you know why after Sullivan and Brawner ceased operations, nobody else went in there to start mining and removing?
A. No, I don't. The only thing is Morrison-Knudsen went in there after that and put that screening plant there, and what they did with the material, I don't know. They tried to sell it to us, but we couldn't use it because it wasn't washed, and there was no water or anything, so we [42] weren't interested.

• • • • •

United States Department of the Interior, Bureau of Land Management

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Contest Nos. N–065729–A–Q and N–065731–A–B, (Involving Charleston Nos. 1 to 22 and Charleston 12A and 13A placer mining claims, situated in Secs. 34, 35, 36 T. 19 S. and in Secs. 3 and 4 T. 20 S., R 59 E., MD Meridian, Clark County, Nevada.)

UNITED STATES OF AMERICA, CONTESTANT

vs.

CHARLESTON STONE PRODUCTS, INC., CONTESTEE

Hearing Room No. 3-604, Federal Building, 300 South Las Vegas, Nevada, Tuesday, October 28, 1969.

The above-entitled matter came on for hearing, pursuant to Notice, at 9:00 a.m.

Before: GRAYDON E. HOLT, Hearing Examiner

Appearances:

Otto Aho, Esq., Field Solicitor, U.S. Department of the Interior, Room 2004, Federal Building, 300 Booth St., Reno, Nevada, appearing on behalf of the Contestant.

W. C. Lamoreaux, Esq., 174 East 8th South, Salt Lake City, Utah, appearing as counsel for the Contestee.

E. A. Hollingsworth, Esq., 555 South Center Street, Reno, Nevada, appearing as counsel for the Contestee.

• • • • •

[200] JOHN W. GODFREY, called to the stand as a witness for and on behalf of the Contestee, being first duly sworn, was examined and testified as follows, to-wit:

DIRECT EXAMINATION

By Mr. HOLLINGSWORTH:

Q. Please state your name for the record, Mr. Godfrey.

A. John W. Godfrey.

Q. Where do you live, Mr. Godfrey?

A. Omaha, Nebraska.

Q. Are you familiar with the Charleston Stone Products Corporation?

A. Yes, sir.

Q. What is your relationship to the corporation?

A. At the present time I am the secretary of the corporation.

• • • • •

[207] • • • By Mr. HOLLINGSWORTH:

Q. Now, would you just briefly state what the Charleston Stone Products, Inc., has done as far as its attempts to develop the subject mining claims?

A. Well, the company has been aggressive in its effort to obtain orders for product in sufficient sizes to warrant the type of processing that is necessary there and in that connection they have expanded approximately $13,000 in the drilling of two wells, one which proved to be a dry well, and one which is a water producing well, and the water producing well has a submersible pump in it and it is a case well and has been drilled to a depth of approximately 700 feet with an 8 inch perforated casing and it was tested to produce approximately 350 gallons per minute, [208] as I recall, which really was the limit of the pump that the test was made with and the draw-down was minimal. This $13,000 represents a portion of the cost.

There was also installed a very large surge tank at the area of the pump and well and the area was fenced. There has been a certain amount of vandalism in the meantime that has reduced the amount of improvements in the area.

Q. Do you recall the drilling contractor that drilled the well?

A. McKinney and Sons, as I recall.

Mr. HOLLINGSWORTH. Your honor, I have several exhibits relating to the drilling of the well. Perhaps, we can introduce them all as one document, if you have no objection.

Mr. AHO. Point out where the well is located and upon your assurance that all these documents relate to that well, I will stipulate to their admission.

The WITNESS. The well is located——

Mr. AHO. You are marking on what exhiibt now?

The WITNESS. I am marking on Exhibit 6 and I am pointing to Claim 22, which previous testimony indicates the existence of a well in the southeast corner of Claim No. 22 and within the limits of Claim No. 22.

This is the producing well. The well which was drilled and did not produce water, occurred practically [209] between Claims 9 and 10, but within Claim 9 on the same exhibit.

The claim here, Claim 9 well, has been abandoned and I question if there is any evidence of its existence there today.

By Mr. HOLLINGSWORTH:

Q. Would you mark the dry well with a green circle and mark it "1" there.

A. The dry well in green in this exhibit?

Q. Yes. Now, would you mark the producing well also with a green circle and mark it "2"?

A. I have done that.

Q. You may sit down, if you will, please.

I show you several instruments and documents and ask you if these documents relate to the drilling and billing of the two wells that you have testified to?

A. The statements do refer to the drilling of the well which includes billing and contracts, as well as log information required by the State of Nevada and there is included in here a document which refers to the water drawn from the producing well and is actually a certificate of an analyses by the Department of Agriculture of the State of Utah, which certifies to the quality of the water and, with the exception of the chemical analysis, the rest of the documents do refer directly to the wells.

Mr. AHO. That is Well No. 2?

[210] The WITNESS. Well No. 1 and 2 are both concerned here.

HEARING EXAMINER. The documents will be marked as Exhibit Q and are received in evidence.

[Thereupon, the documents referred to above were marked as Contestee's Exhibit Q for identification and were received in evidence.]

Mr. HOLLINGSWORTH. Thank you.

By Mr. HOLLINGSWORTH:

Q. You mentioned, in reference to what you have marked as Well No. 2 on Exhibit No. 6, you are certain it existed in Claim No. 22 or within the exterior boundaries of Claim 22, why are you so affirmative or definite about that particular point?

A. This is a point I wanted to make sure was carefully cared for at the time the drilling was made. It would be a sad thing to drill a well, and for someone else. The well was located by a professional engineer who had a great knowledge of the Las Vegas area and, particularly, of the Charleston claims. His name was L. M. Bobeau, B-o-b-e-a-u, and he had previously done great work in the area when the Murphy and Pine's locations were first made and was responsible, as I recall, for the subsequent amount of the claims and placing them in conformity with the cadestral features of the land net. And, he located this and it was on an admonishment from me that this was done carefully and to my satisfac- [211] tion and to his.

Q. Did he also make a land status investigation?

A. Yes, sir, he did.

Q. Did he convey to the corporation the results of what he obtained?

A. Yes, sir.

Q. Do you know who he referred to when he made his——

A. All I knew was he was going to contact the B.L.M. Office.

Q. Do you know whether or not he did contact the B.L.M. Office?

A. Yes, sir. We have correspondence to indicate he has.

Q. Where is Mr. Bobeau at the present time?

A. Deceased.

* * * * *

CROSS EXAMINATION

[220] • • • Q. Now, are the purposes of drilling wells to obtain water on these claims?

A. The purpose was to provide water for the washing of material and for the servicing of a batch plant for readymix, which would eliminate the haul of aggregate material and then only be involved in the haul of the finished product, which would be transit-mix concrete.

Q. That would infer, then, washing would be necessary to get a good concrete aggregate, is that it?

A. To get, principally, to wash the sand, and sand, it isn't necessary for a good concrete aggregate to wash, but, as long as you are going to provide specification material, you must wash.

• • • • •

[221–223] • • • • •

[224] HERMAN J. YOUNG, called as a witness for and on behalf of the contestee, being first duly sworn, was exhibited and testified as follows, to-wit:

DIRECT EXAMINATION

By Mr. HOLLINGSWORTH:

Q. Mr. Young, please state your name for the record.

A. Herman J. Young.

Q. Where do you live, Mr. Young?

A. 2001 Boise Avenue, Boise, Idaho.

Q. What is your present occupation or profession, Mr. Young?

A. I am superintendent of crushing and asphalt operations in the Boise District for Morrison-Knudsen Construction, Boise, Idaho.

• • • • •

[227] • • • By Mr. HOLLINGSWORTH:

Q. Now, I hand you exhibits—Exhibit S and ask you if these photographs represent the activities conducted by Morrison-Knudsen and by yourself during the period of time, 1962 until you ceased operations?

A. Actually, this erection started in 1961, in February, '61, and then the processing operation continued sporadically through '63.

Q. What was the purpose of the equipment on the property at that time?

A. It was our intent to check out the feasibility of [228] operating this pit for the processing of all types of construction aggregates, namely, base coarses, asphalt coarses, pouring cement, concrete.

Q. Did you have the use of any water during that period of time you were conducting the investigation?

A. No, sir.

• • • • •

[229] • • • Q. Were you able to produce any saleable product from the claims with the use of the equipment depicted on the photographs in Exhibit S?

A. Yes, I was. I separated the coarse aggregates into five sizes, and of course, the two inch to the maximum size of ten inch was a material indicated usage for leaching rock.

The two inch to the three-quarter size was a concrete coarse aggregate material, as well as the inch and a half to the three-quarter and the three-quarter to number 4, then.

The various materials, the sizes, would meet some of the designated specifications, but would not meet all of them without a blending process, and the sand, after the introduction of air facilities and a little rescreen set-up would meet the State Specifications for concrete sand. However, the production of this method was not feasible, due to the inability for greater production necessary for the expenditure of the equipment, therefore, requiring water to process concrete sand.

• • • • •

[230] * * * Q. Had you been amply provided with the funds necessary to produce the aggregate, is it your opinion that you could have competed successfully in the Las Vegas Valley during that period of time?

A. I could have competed with the coarse aggregates with the current equipment I had.

Q. You could produce——

A. Not with additional equipment. I could have competed with the coarse aggregate, not the sand, but the coarse aggregate with the minimum amount of equipment that I had.

[231] Q. But, as to the other fraction of the aggregate, that would require additional equipment?

A. Processing by washing, mainly.

* * * * *

[249] * * * Mr. HOLLINGSWORTH. I will call Mr. Kaltenborn to the witness stand, please.

R. J, Kaltenborn, called as a witness for and on behalf of the Contestee, being first duly sworn, was examined and testified as follows, to-wit:

DIRECT EXAMINATION

By Mr. HOLLINGSWORTH:

Q. Would you please state your name for the record, Mr. Kaltenborn?

A. R. J. Kaltenborn, K-a-l-t-e-n-b-o-r-n.

Q. Where do you live, Mr. Kaltenborn?

A. 900 Rancho Circle, Las Vegas.

Q. What is your occupation and profession?

A. Well, at the present time I just sold an automotive parts business which I operated since '32 and I am doing [250] considerable building for myself. I am not—I do hold a general contractor's license, but I am not building for others, but for myself.

Q. Have you at any time ever been engaged in the construction business? For purposes other than your own?

A. I have.

Q. Are you familiar with the organization known as the Southern Nevada Industries?

A. I established it about 1940.

Q. Would you explain what the purpose of the corporation was? What type of business was it?

A. Well, we started out at the beginning to manufacture and had the first concrete block plant in Las Vegas. Then, we graduated into the readymix concrete business and prior to selling it, I believe, in 1946, we poured all the concrete on the magnesium plant, as well as a greater part of it on several of the hotels and public housing units constructed during World War II.

Q. Do you recall where you obtained your raw materials for the manufacture of concrete block and the concrete aggregate?

A. Well, from 19—I am sure it was 1940, we opened the pit. At that time it was called the Pine and Murphy pit and we did build the road up Lone Mountain Road to the base of Mount Charleston and we got our material from the pit [251] at the end of Lone Mountain Road, at the base of Mount Charleston.

Q. Are you familiar with the general location of the deposit you are referring to?

A. Yes, sir.

Q. Referring to Exhibit E, I ask you if the group of claims identified as the Charleston Claims as seen on the individual exhibits are generally in the area of the deposit from which you obtained the material?

A. Yes, sir.

Q. Do you know how far that deposit is from downtown Las Vegas?

A. Well, it is all according to—it is a pretty big town now, I think we figured at that time about 10 miles, 10 or 11 miles.

Q. Were you processing material at the deposit at that time?

A. No, sir. We hauled it to the corner of Tonopah Highway and what is now known as Lake Mead Boulevard, about a mile and a half north of Bonanza Road.

Q. The distance of 10 miles, which you gave, would be from the point of the plant?

A. I think that is what we considered to be about 10 miles to the plant at the corner of what was then called Coran, C-o-r-a-n Lane. It is now Lake Mead Boulevard and [252] Tonopah Highway.

Q. I notice you are handling certain photographs.

Mr. HOLLINGSWORTH. I wonder if we could have these marked, Mr. Examiner?

Hearing Examiner. All right, they will be marked as Exhibits T–1, T–2 and T–3.

[Thereupon, the photographs referred to above were marked as Contestee's Exhibits T–1, T–2 and T–3 for identification respectively.]

By Mr. Hollingsworth:

Q. I hand you Exhibits T–1, T–2, and T–3, marked for identification, and ask you if you recognize the scene depicted in the photographs?

A. Yes, sir. It is the place where we had our washing plant and crushing plant.

• • • • •

[304] • • • Mr. Hollingsworth. I would like to call Mr. Wheeler.

Rae Alan Wheeler, Jr., called to the stand as a witness for and on behalf of the contestee, having been first duly sworn, was examined and [305] testified as follows, to-wit:

DIRECT EXAMINATION

By Mr. Hollingsworth:

Q. Mr. Wheeler, will you please state your full name for the record?

A. Rae Alan Wheeler, Jr.

Q. Where do you live, sir?

A. 3016 Colanthe, C-o-l-a-n-t-h-e Avenue, Las Vegas.

Q. How long have you lived in the Las Vegas area?

A. About 18 years.

Q. What is your occupation and profession?

A. I am in the trucking business. I have got two trucklines, interstate and intrastate.

Q. How long have you been engaged in the trucking business?

A. About 25 years.

• • • • •

[317] • • • Q. Do you know where the leach rock was coming from that you were hauling?

A. Yes, out of Brawner's pit. We were hauling probably about 3000 or 4000 tons a month there on that job.

Q. You stated this was going to which disposal plant?

A. It is on the end of Vegas Valley Drive.

Q. Would that be for the City or the County?

A. You mean who it belongs to?

Q. Yes.

A. I can't answer that.

Q. Who else did you haul material to and during what period of time?

Hearing Examiner. You mean from these claims?

Mr. Hollingsworth. From these claims.

The Witness. We hauled to the City of North Las Vegas. We hauled to Stocks' Sand and Gravel Company.

By Mr. Hollingsworth:

Q. Do you recall what kind of materials you hauled to Stocks' Sand and Gravel?

A. Sand.

Q. Do you recall approximately when that might have [318] have been?

A. 1956.

Q. Did Mr. Brawner have any water on the claims at that time?

A. No. He produced his material without water. He didn't have too much dirt in it.

Q. He was able to produce——

A. He was able to produce better materials than a lot of people would that were washing their material and he did it well without water.

• • • • •

United States Department of Interior
Bureau of Land Management

Contest Nos. N–065729 A–Q and N–065731 A–B

United States of America, contestant

vs.

Charleston Stone Products, Inc., contestee

Deposition of Starr Hill, Jr., taken October 21, 1969, at Reno, Nevada

Appearances:

For the Contestant: Otto Aho, Field Solicitor, U.S. Department of the Interior, Room 2004 Federal Building, 300 Booth Street, Reno, Nevada.

For the Contestee: Echeverria & Osborne, by Ed Hollingsworth, 555 South Center Street, Reno, Nevada.

Reported by: Terry T. Blanco.

[3] • • • • •

DIRECT EXAMINATION

By Mr. HOLLINGSWORTH:

Q. Now, Mr. Hill, will you please state your full name?
A. Starr Hill, Jr.
Q. Where do you live, Mr. Hill?
A. Reno, Nevada.
Q. What is your present occupation or profession?
A. I am surface water engineer for the State of [4] Nevada.

• • • • •

Q. When did you receive your professional engineer's license?
A. In 1947.
Q. When were you issued the license, in the capacity of a land surveyor?
A. 1947.
Q. Do you belong to any professional organizations?
A. I am a registered engineer, professional engineer with the State of Nevada, and a member of the American Institute of Mining Engineers.

[5] • • • • •

Q. Could you relate briefly the type of activities that you were engaged in during the time you were employed by the Gypsum company and the Bureau of Mines and BLM?

A. Yes, by the Gypsum company, I was investigating, examining, making reports on non-metallic deposits in Nevada in which National Gypsum was interested in acquiring. The Bureau of Mines was with the safety branch. The work was the examination of mines in Arizona and New Mexico from the safety standpoint to make sure they qualified with federal regulations regarding same. The Bureau of Land Management, the valuation engineer, I was supervising valuation engineer from 1956 to probably 1959, in which I supervised two valuation engineers and one geologist other than myself in the examination of mining claims on public domain for the purpose of determining their validity, whether contests should be made, testifying in contests, also examination of metallic, non-metallic mines [6] to value them from a dollars and cents point of view. I guess that is all.

Q. In conjunction with your supervisory duties with the Bureau of Land Management, did you also make assignments of investigations by the other employees—

A. Yes, I did. I assigned the work to the other employees.

• • • • •

[25] • • • Q. Now, you mentioned that during the time you visited the so-called Brawner operation, that he did not have any water?

A. No, sir. He had no water.

Q. He was producing the type of materials that you referred to without the use of any water whatsoever?

A. Yes. He simply used vibrating screens and a crusher.

Q. Were any other operators in the Valley producing similar aggregates without the use of water?

A. No. At the time of our examination, none of the others were without water. They used water in their flow sheets in the processing of sand and gravel.

[26] Q. This is where concrete aggregate and plaster sand and mortar plant services?

A. Yes.

Q. Is it necessary to use water for the base course material and asphault mixes?

A. No. That would make a pretty expensive operation out of it to use water in your flow sheet for road base.

Q. Were any of the operations you observed using water in their flow sheets for the production of base course material?

A. I don't believe so.

Q. In other words, it was not the practice down there to process base course material in that manner?

A. No, it would make it too expensive.

• • • • •

[27] Q. Type of material, quality, quantity, suitability for use?

A. Yes, yes. In all the deposits, we secured an estimate of the size of the deposit. His was by far the deepest deposit, apparently the largest reserves of any we examined. The material seemed, as proved by the processing, dry processing, the material was of good size gradation. It took very little processing to make it qualified for concrete aggregate.

• • • • •

[45] • • • Q. Based upon your experience as a practical miner and as a mining engineer, considering a deposit similar to the one Mr. Brawner was operating, would you state briefly how you would develop the deposit for [46] commercial exploitation?

A. I think he was limited somewhat in his market because of the lack of water.

• • • • •

OVERSIZE FOLDOUT(S) FOUND HERE IN THE PRINTED EDITION OF THIS VOLUME ARE FOUND FOLLOWING THE LAST PAGE OF TEXT IN THIS MICROFICHE EDITION

SEE FOLDOUT NO. 1

WELL LOG AND REPORT TO THE STATE ENGINEER OF NEVADA

PLEASE COMPLETE THIS FORM IN ITS ENTIRETY

Log No.
Rec. 19
Well No.
Permit No.
Do not fill in

Owner Charleston Stone Products Driller S.E. McKinney & Sons, Inc.

Address 133 North First West, Salt Lake City, Utah Address 1042 So. Main Lic. No. 45

Location of well: ¼ ¼ Sec. , T. N/S, R. E, in Clark County

or Charleston Placer Claim #22, NE-NE-SE-36-19-59

Water will be used for Quasi Municipal Total depth of well 700 feet

Size of drilled hole 12" to 50', 10" to 585 Weight of casing per linear foot 3/16"
8" to 700'

Thickness of casing 3/16" Temp. of water

Diameter and length of casing 8" ID from 0' to 600'
(Casing 12" in diameter and under give inside diameter; casing 12" in diameter give outside diameter.)

If flowing well give flow in c.f.s. or g.p.m. and pressure

If nonflowing well give depth of standing water from surface 442 feet

If flowing well describe control works
(Type and size of valve, etc.)

Date of commencement of well 5/17/62 Date of completion of well 6/19/62

Type of well rig Bucyrus Erie 22W

LOG OF FORMATIONS

From feet	To feet	Thickness feet	Type of material
0	8	8	gravel & rock
8	18	10	rock
18	25	7	boulders & grave l
25	35	10	boulders
35	39	4	boulders & clay
39	60	21	rocks & cemented gravel
60	442	382	cement gravel
442	455	13	cement gravel(water)
455	470	15	hard sand
470	585	115	gravel (water)
585	700	115	cement gravel(water)
ote from 670 to 685 smelly water			

EXHIBIT "Q"

The within is one of several pages constituting said Exhibit.

Water-bearing Formation, Casing Perforations, Etc.

Chief aquifer (water-bearing formation)
from 442 to 455 ft.
Other aquifers 470 to 585'
585 to 700'

First water at 442 feet.

Casing perforated
from 436 to 600 ft.

Size of perforations
3/16" X 10"

In the United States District Court for the District of Nevada

No. LV–2039—BRT

CHARLESTONE STONE PRODUCTS CO., INC., A CORPORATION,
PLAINTIFF

vs.

ROGER MORTON, SECRETARY OF THE INTERIOR, UNITED STATES OF AMERICA, DEFENDANTS

Complaint for Review

W. C. Lamoreaux, Attorney for Plaintiff, 174 East 8th South, 363–450, Salt Lake City, Utah.

Plaintiff complains against defendants as follows:

1. This is an action to review and reverse the decision of defendants above, and the Office of Hearings and Appeals, Interior Board of Land Appeals, IBLA 72–111 decided Jan. 18, 1973, a copy thereof being attached and made a part hereof. Jurisdiction is claimed on the basis of the ADMINISTRATIVE PROCEDURES ACT, Title 5, USCA No. 701 et seq. and also on Title 28 USCA sections 1361 and 1391(e) thereof.

2. Plaintiff is the owner of and has the right to possession of 25 sand and gravel placer mining claims of ancient origin, the same being located in Clark County, Nevada within the venue of the southern division of the above court. Attention is called to Number 73–1452 before the 9th Circuit Court of Appeals to prove diligence.

3. In 1942, 23 placer mining claims were located according to law in Clark County, Nevada and namer Charlestone, and Charlestone 1 to 22 inclusive by predecessors of plaintiff. Prior to July 23, 1955, and beginning with 1942 large extractions of sand and gravel aggregate materials were taken from said claims and were sold and incorporated into buildings, streets, sidewalks, gutters and other substantial improvements within Clark County, all for money. On and after July 23, 1955, sub-

stantial marketing from said claims continued, and development work done, the claims being assigned to plaintiffs. A very substantial developmental program of construction of a large plant facility with a lease of part of said claims to one of the largest purveyors of ready-mix concrete was effected involving expenditures in excess of $250,000 prior to the contest herein initiated. Marketability of aggregate from the entire deposit including all of said claims was accomplished at a profitable level.

4. In 1965 defendants contested the rights of plaintiff to the claims, and all marketing and developmental efforts came to a halt for reasons of said contest. Plaintiffs suffered a legal wrong because of said agency action.

5. An evidentiary hearing was had between the parties in which a record was taken as to the history of the claims and the bona-fides of development, all of which should come before this court on review.

6. Defendants have deprived plaintiff of its constitutional and statutory rights of due process of law in the following particulars, among others: the defendants have:

a. Been arbitrary and capricious and abused their discretion under law.

b. Violated the constitutional and statutory rights of plaintiff, and their privileges and immunities.

c. Defendants have operated in excess of their statutory authority and limitations, depriving plaintiff of lawful rights.

d. Defendants have operated without observance of procedure required by law.

e. Defendants actions and their findings and concusions and judgment are unsupported by substantial evidence.

f. The findings, conclusions and judgment attached are unwarranted by the facts, and are contrary to the facts and the law, and are not supported by substantial evidence, and the same must be reversed, except as to claim X which should be affirmed.

7. The attached decision is contrary to law and must be reviewed and reversed as aforesaid. Plaintiff has no remedy at law otherwise.

WHEREFORE, plaintiff prays this court shall review the record, the findings of fact, conclusions of law, and judgment, and reverse the same, and award to plaintiff all of their rights

to possession including their rights to Claim X and for costs and equitable relief. The action is filed out of caution to preserve all rights to plaintiff to contest government action, all rights of review and appeal being claimed and none waived.

E. A. HOLLINGSWORTH,
Attorney,
555 So. Center, Reno, Nevada.
W. C. LAMOREAUX,
Attorney,
174 East 8th South, Salt Lake City, Utah.

In the United States District Court for the District of Nevada

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Civil Action No. LV–2039–BRT

CHARLESTONE STONE PRODUCTS, CO., INC., PLAINTIFF

v.

ROGERS C. B. MORTON, ET AL., DEFENDANTS

V. DeVoe Heaton, United States Attorney.

Assistant United States Attorney, Federal Building & Courthouse, 300 Booth Street, Room 5011, Reno, Nevada 89502; Telephone: (702) 784–5439; attorneys for the Defendants.

Answer

Defendants answer the complaint as follows:

First Defense

The complaint fails to state a claim upon which relief can be granted.

Second Defense

1. The allegations in paragraph 1 consist of a description of the objective of the case and conclusions of law which require no answer.

2. Defendants admits plaintiff's right to possession of the Charleston No. 10 placer mining claim but deny the remainder of the allegation in the first sentence of paragraph 2. Defendants affirmatively assert that the action described as "Number 73–1452 before the 9th Circuit Court of Appeals" was dismissed for lack of jurisdiction on May 17, 1973.

3. Defendants admit the allegations in the first sentence of paragraph 3, except that the claims were named the "Charleston" claims rather than "Charlestone" claims, and the allegation that the claims were located according to law is a conclusion of law which requires no answer. Defendants deny the allegations in the second and fifth sentences of paragraph 3 and

are without knowledge or information sufficient to form a belief as to the truth of the allegations in the third and fourth sentences of that paragraph.

4. Defendants admit that the Government contested plaintiff's claims in 1965 but deny that plaintiff suffered a legal wrong thereby and are without knowledge or information sufficient to form a belief as to the truth of the allegation that all marketing and developmental efforts came to a halt as a result thereof.

5. Defendants admit the allegations in paragraph 5.

6. Defendants deny the allegations in paragraph 6.

7. Defendants deny the allegations in paragraph 7.

Defendants deny every allegation of the complaint which is not expressly admitted.

WHEREFORE, defendants respectfully request that the complaint be dismissed and that they be awarded their costs.

V. DEVOE HEATON,
United States Attorney.
E. PIERRE GEZELIN,
Assistant United States Attorney.

In the United States District Court for the District of Nevada

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Civil Action No. LV–2039–BRT

CHARLESTONE STONE PRODUCTS CO., INC., PLAINTIFF

v.

ROGERS C. B. MORTON, DEFENDANT

MOTION FOR SUMMARY JUDGMENT

V. DeVoe Heaton, United States Attorney.

E. Pierre Gezelin, Assistant United States Attorney, Federal Building and Courthouse, 300 Booth Street, Room 5011. Reno, Nevada 89502; Telephone: (702) 784–5439.

Robert Allen Zupkus, Attorney, Department of Justice, Washington, D.C. 20530.

Defendant's Motion or Summary Judgment

Defendant, by his attorney, moves this Court to grant summary judgment pursuant to Rule 56, F.R.Civ.P., on the grounds that there is no genuine issue as to any material fact and that defendant is entitled to a judgment as a matter of law.

This motion is based upon the complaint, answer, and the entire administrative record of the Department of the Interior relating to Nevada Contests 065729 A to Q inclusive and Nevada Contests 065731 A and B, entitled *United States* v. *Charleston Stone Products, Inc.*, which has been submitted with the affidavit of Newton Frishberg, Chairman, Interior Board of Land Appeals.

Respectfully,

V. DEVOE HEATON,
United States Attorney,
E. PIERRE GEZELIN,
Assistant United States Attorney,
ROBERT A. ZUPKUS,
Attorney,
Attorneys for Defendants.

In the United States District Court for the District of Nevada

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Civil Action No. LV–2039–BRT

CHARLESTONE STONE PRODUCTS CO., INC., PLAINTIFF

v.

ROGERS C. B. MORTON, DEFENDANT

COUNTER MOTION FOR SUMMARY JUDGMENT

E. A. Hollingsworth and Warwick C. Lamoreaux, Attorneys for Plaintiff, Charleston Stone Products Co. Inc., 555 South Center Street, Reno, Nevada 89501; Telephone: 702–323–8678.

PLAINTIFF'S COUNTER MOTION FOR SUMMARY JUDGMENT

Plaintiff, by and through its attorneys, hereby counter moves this court for Summary Judgment, pursuant to Rule 56 FRCP on the grounds that there is no genuine issue as to any material fact and that plaintiff is entitled to a judgment as a matter of law awarding a possessory right to all of the claims.

This motion is based on the complaint, answer, and the entire administrative record taken at the hearing, and also additional data submitted with the affidavit of Newton Frishberg, Chairman, Interior Board of Land Appeals, which is before this Court but was not available to plaintiff until recently. Reference is made to certain elements thereof in the appendix to plaintiff's brief.

Respectfully,

EDGAR A. HOLLINGSWORTH,
WARWICK C. LAMOREAUX,
Attorneys for Plaintiff,
555 South Center Street,
Reno, Nevada.

In the United States District Court for the District of Nevada

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Civil No. LV-2039 BRT

CHARLESTONE STONE PRODUCTS CO., INC., PLAINTIFF

vs.

ROGERS C. B. MORTON, DEFENDANT

[Received and filed Nov. 8, 9:23 AM 1974, John A. Porter, Deputy.]

Judgment

This matter came before the Court on cross-motions for summary judgment to review final agency action. The Court has concurrently herewith filed a Memorandum Opinion. Good cause appearing, *IT HEREBY IS ORDERED:*

The decision of the Interior Board of Land Appeals filed January 18, 1973 is vacated and set aside and the subject matter of this action is remanded to the Department of the Interior for further proceedings consistent with the Opinion filed.

Dated: November 7, 1974.

BRUCE R. THOMPSON,
United States District Judge.

United States Court of Appeals for the Ninth Circuit

No. 75-1532

CHARLESTONE STONE PRODUCTS CO., INC., A CORPORATION, PLAINTIFF-APPELLEE

v.

CECIL D. ANDRUS, SECRETARY OF THE INTERIOR, UNITED STATES OF AMERICA, DEFENDANTS-APPELLANTS

[Filed Aug. 25, 1977, Emil E. Melfi, Jr., Clerk, U.S. Court of Appeals]

Order

Appeal from the United States District Court for the District of Nevada

Before: TRASK and GOODWIN, Circuit Judges, and EAST,[1] District Judge

IT IS ORDERED that this Court's mandate upon the decision in the above-captioned case be stayed until September 10, 1977, or if a petition for certiorari is filed in the United States Supreme Court on or before that date, until denied by the United States Supreme Court, or if granted, until the matter is finally resolved by that Court.

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[1] Honorable William G. East, Senior United States District Judge for the District of Oregon, sitting by designation.

Supreme Court of the United States

No. 77-380

CECIL D. ANDRUS, SECRETARY OF THE INTERIOR, PETITIONER

v.

CHARLESTONE STONE PRODUCTS CO., INC.

[Filed November 28, 1977]

Order Allowing Certiorari

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted.

Mr. Justice Blackmun took no part in the consideration or decision of this petition.

U.S. GOVERNMENT PRINTING OFFICE: 1978